IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Appeal No.370-DBA of 1997.
Date of decision: 22.2.2007

State of Punjab

.....Appellant

v.

Kuldip Singh and others.

.....Respondents

CORAM: HON'BLE MR.JUSTICE UMA NATH SINGH.
HON'BLE MR.JUSTICE A.N. JINDAL.

Present:- Mr.M.S.Joshi,Deputy Advocate General,Punjab.

Uma Nath Singh,J. (Oral)

This criminal appeal by the State arises out of a judgment dated 9.8.1996 passed by learned Judicial Magistrate Ist Class,Jalandhar, in criminal case no.30/1/1993, holding the accused respondent Kuldip Singh guilty of offence under Section 325 IPC, and releasing him on probation for a period of one year on furnishing of probation bonds in the sum of Rs.10,000/- with one surety in the like amount with undertaking to keep peace and to be of good behaviour, and also to appear in Court to receive sentence as and when called upon to do so during the said period of one year.

As per the brief facts of the case, on the date of incident i.e.

16.10.1992, an MLR of complainant Mohan Singh was received by ASI Harbans Singh. On the basis of that MLR, he went to PHC Kala Bakra for recording the statement of the complainant. He sought the opinion of Doctor as regards the fitness of the patient to make a statement. The Doctor opined that the complainant was not fit to make any statement. Again on 17.10.1992, the ASI went to the hospital, but the Doctor did not opine that the condition of the patient was fit enough to give a statement. It is only on 18.10.1992, that the Doctor gave his opinion saying that the complainant was fit to make a statement. As per his statement, on the date of incident i.e. 16.10.1992, at about 12.30 PM, he was present in his house situated at Samadi of Sant. At that time, accused persons namely Ranjit Singh with a dang, Kuldip Singh with a kirpan and Sukhdev Singh with a rod being duly armed came there. Ranjit Singh raised a lalkara saying that the complainant should be caught and be taught a lesson for having got a raid conducted on them by the police. Allegedly, accused Kuldip Singh made a kirpan blow, hitting the complainant on his left ear upper side whereas co-accused Sukhdev Singh gave a rod blow which hit the reverse side of his left shoulder. As per further allegations, accused Ranjit Singh made a dang blow which hit his left leg near the knee and Kuldip Singh made a kirpan

blow on his right arm between elbow and wrist. Again accused Sukhdev Singh gave a rod blow which hit his left thigh, and Ranjit Singh caused a fist blow on his mouth resulting in uprooting of a teeth. The complainant raised a hue and cry and when witness Kulwinder Singh and Arjan Singh (not examined) had reached there, the accused persons ran away with their respective weapons.

On the above statement, an FIR was recorded and on completion of investigation, a challan was laid before the Court. The learned trial Magistrate on appreciation of evidence has held one of three accused persons Kuldip Singh guilty of charge under Section 325 IPC and sentenced him to RI for one year.

We have heard learned counsel for the State and perused the impugned judgment. We do not find any reason to interfere with the judgment. Learned trial Magistrate has correctly read the evidence and has recorded the acquittal by giving the reasons which are factually correct and legally sustainable. The prosecution has examined 6 witnesses namely Mohan Singh (PW1), Kulwinder Singh (PW2), ASI Gurbax Ram (PW3), ASI Harbans Singh (PW4), Dr.Krishna Kant(PW5), and Dr.Jaspal Singh (PW6). There was a delay of two days in lodging the FIR-- the incident

had taken place on 16.10.1992 but the FIR was lodged on 18.10.1992. The Doctor had given the opinion that the injured was not in a fit condition to make a statement but the Bed Head Ticket and the statement of the doctor indicated that the patient remained conscious throughout. The complainant had not received any injury on the vital part of the body. As regards injury no.2, initially it was found to be a swelling with tenderness but later on it was interpolated to read as incised wound. Thus, the injury no.2 does not appear to be clear. Dr.Krishna Kanta who had medically examined the complainant Mohan (PW1) has stated that the injury no.2 was caused by a blunt weapon and Dr.Jaspal Singh (PW6) has deposed that the fracture on injury no.2 was only due to use of some blunt weapon. Regarding injury no.3, firstly, its seat was mentioned to be on the right leg, but later on, it was shifted to left leg. This injury has been attributed to accused Sukhdev Singh. However, looking to unexplained changes in the MLR, the presence of the accused and inflicting of that injury also became doubtful and it could be a self suffered injury to implicate the accused. Such a view taken by the trial Court appears to be quite reasonable. So far as the involvement of accused Ranjit Singh is concerned, Gian Singh (DW1) has stated that Ranjit Singh being a member of Panchayat was with him at the time of offence. A DSP in

a domestic inquiry also found him to be innocent. Besides, injury no.1 was attributed to him. According to the statement of the complainant, accused Ranjit Singh had given a fist blow on his face and due to that, one teeth was uprooted. However, there was no presence of any corresponding injury on his lip. Thus, the association of accused with this injury also becomes doubtful. Besides, complainant Mohan Singh (PW1) harboured a grudge against accused Ranjit Singh as his son Bhajan Singh was arrested in connection with some terrorists' case. He suspected the hands of accused Ranjit Singh in that case. Similarly, witness Kulwinder Singh (PW2) was also inimically disposed towards accused Ranjit Singh as he suspected that his father had disinherited him from his property at the instance of Ranjit Singh who used to move in his company. There are vital contradictions between the statements of ASI Gurbax Singh (PWA3) and ASI Harbans Singh (PW4) as regards the recording of the first zimni order. Arjan Singh, a witness to the alleged incident, was not produced in the witness box.

In this background, the acquittal of accused Ranjit Singh and Sukhdev Singh appear to be justified. Regarding accused Kuldip Singh, he is alleged to be the author of injury no.2 which though has been held to be grievous in nature, has been found to be the result of use of some blunt

weapon. Thus, the offence would be covered only under Section 325 IPC and not under Section 326 IPC. The offence being covered under Section 360 Cr.P.C., the accused was released on probation for 1 year for the reasons that he had remained in custody for 10-12 days; he was aged 26 years and had small children to support, and this was his first offence.

Thus, the impugned judgment is affirmed, and the Criminal Appeal is hereby dismissed.

(Uma Nath Singh)
Judge

February 22,2007.
joshi

(A.N.Jindal)
Judge